

The U.S. Occupational Safety and Health Review Commission

OSHRC

FISCAL YEAR 2016

PERFORMANCE BUDGET AND JUSTIFICATION



February 2015

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Fiscal Year 2016 Performance Budget Justification

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I. INTRODUCTION -- MISSION, VISION, AND STRATEGIC GOALS

The U.S. Occupational Safety and Health Review Commission

OUR MISSION

The U.S. Occupational Safety and Health Review Commission (OSHRC or Review Commission) is an independent, adjudicatory agency created by the Occupational Safety and Health Act of 1970 (the Act). Our sole statutory mandate is to serve as an administrative court providing fair and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA), employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and that all parties are treated consistent with due process when disputes arise with OSHA.

Our Functions and Procedures

The Act and our Rules of Procedure (which are similar to the Federal Rules of Civil Procedure) provide two levels of adjudication when an employer contests an OSHA citation for alleged violations of the Act or failure to abate such alleged violations. The first is a trial level, which affords an opportunity for a hearing before a Review Commission Administrative Law Judge (ALJ or judge). The judge's decision becomes final unless the decision is directed for review to the Commission. The second level is a discretionary appellate review of the judge's decision by Commission members (Commissioners) who are appointed by the President and subject to Senate confirmation. Both before its judges and the Commissioners, the Review Commission provides fair and impartial adjudication of cases concerning the safety and health of employees' working conditions in the United States.

Our principal (National) office is located in Washington, DC. OSHRC also has two regional offices: one in Atlanta, GA, and one in Denver, CO. The regional offices are staffed with Administrative Law Judges who travel, as necessary, to adjudicate cases in locales near where the alleged workplace violations took place.

Vision Statement

The Review Commission strives to be:

- A judicial body that is – and recognized for being – objective, fair, prompt, professional, and respected.
- An agency that creates a body of law through its decisions that define and explain the rights and responsibilities of employers and employees under the Act.
- A model Federal agency with highly effective processes, a highly motivated, qualified and diverse workforce, and modern information management, communications, and administrative systems.

- An agency that values teamwork, develops its employees, and strives to improve its performance, service, and value to the American people.

Strategic Goals

OSHRC has three overarching strategic goals:

- 1) Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.
- 2) Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements.
- 3) Responsible stewardship of resources to enhance Agency operations and efficiencies in information management, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.

II. BUDGET REQUEST SUMMARY

Budget Request Summary

To continue our mission of adjudicating OSHA-issued workplace safety citations, the Occupational Safety and Health Review Commission requests an appropriation of \$13,212,000 to fund essential agency programs and support 66 full-time equivalent (FTE) positions in FY 2016. The funding level would also allow us to fulfill our legislative mandate to serve as an administrative court providing fair and prompt resolution of disputes involving OSHA, employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The amount supports the goal in the Review Commission's Strategic Plan to improve service to the public, and the continued implementation of an e-filing initiative, discussed below.

Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by Administrative Law Judges. The increased complexity of the caseload is a trend attributed to two factors. The first factor is the result of OSHA's focus on encouraging more resource and time-intensive inspections. The second factor is a result of the Department of Labor, Office of the Solicitor's decision to leverage litigation resources and focus away from high volume and in favor of high-impact strategic cases. The increase in complexity of our cases is a challenge for the Review Commission because processing such cases requires Administrative Law Judges to invest a greater amount of time in handling the matters, and places an increased demand on the limited FTE assigned to handle the volume of cases. In addition to the increased complexity of our cases, the level of new cases exceeds our FY 2008 levels and the end of year inventory remains higher than previous years. Thus, in order to accomplish our mission of adjudicating OSHA-issued workplace safety citations at an acceptable pace, while avoiding the severe case backlog experienced by the Federal Mine Safety and Health Review Commission, the Occupational Safety and Health Review Commission requests an appropriation of \$13,212,000. This funding level supports 66 FTEs, providing for three additional FTE positions to assist the ALJs in the Office of the Chief Administrative Law Judge and one additional FTE position, a supervisory attorney advisor, to support the Commission function.

Our FY 2016 costs include:

- \$ 9,938,000 to support direct payroll and related costs for 66 FTE positions. These costs are approximately 75 percent of the Review Commission's budget request. This level of FTE will be used to handle the increased and more complex case load which has developed over the past several fiscal years, especially at the ALJ level.
- \$1,481,537 for office space rent.
- \$442,000 for services provided by other Federal agencies, such as support for financial and administrative services provided by the Bureau of the Fiscal Service (BFS) and personnel and payroll services provided by the National Finance Center (NFC).
- \$388,000 to continue OSHRC's e-filing initiative.

- Funds to enable the Review Commission to complete its annual performance plan goals and targets and to implement government-wide and Review Commission specific transparency initiatives.

E-filing Initiative

The Review Commission is in the process of securing information technology (IT) infrastructure upgrades through the established Networx contract to support our cloud-based initiatives including an electronic filing (e-filing) solution which would permit the electronic filing and service of litigation documents. The e-filing solution is intended to become an essential part of an Agency-wide initiative to promote transparency, support technology improvements, and integrate business process automation to improve accuracy and efficiency in case management practices.

This initiative directly supports the Review Commission's strategic and annual performance plans which are focused on the attainment of three separate goals: 1) Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges; 2) Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements; and 3) Responsible stewardship of agency resources to enhance operations and efficiencies and information technology, financial management, human resources, and real property to accomplish the agency's statutory mandate and other applicable law.

This initiative began in August 2013, when the Review Commission held a Pre-solicitation Conference to encourage industry participation and involvement during the development of an e-filing performance work statement. The Agency awarded a competitive contract in September 2013 for the preliminary stages of development, deployment and implementation of the e-filing system, using funds from an unexpected rent rebate. These FY 2013 funds were obligated to support the required exploratory stages connected with the implementation of e-filing. The development and testing with limited licensing has provided an opportunity to encourage internal user participation during the design. This methodology is expected to facilitate a smooth roll-out of the completed system when full licensing is available.

The Review Commission's baseline infrastructure upgrade to support cloud computing and e-filing is expected to be completed in FY 2015. The upgrade will facilitate the process of testing the functional aspects of our newly developed e-filing system in an effort to ensure that all users and stakeholders requirements have been addressed prior to finalizing the system. The e-filing system has advanced to a state that allows users to begin fully testing and evaluating its design and processes. The Review Commission users will utilize test data in order to populate the system to verify that all data is accumulated properly for reporting and statistical sampling. During this test phase, the Review Commission will solicit stakeholder comments and tests of the electronic interface to ensure suitability of design.

The Review Commission's FY 2016 budget includes \$388,000 to support the e-filing initiative. This amount includes improvements and system deployment costs, as well as the costs for annual services to support and maintain both the upgraded infrastructure and the e-filing system and software. It also provides for additional professional customization after initial roll out to address user needs.

Language Access

On February 17, 2011, the United States Attorney General issued a Memorandum For Heads of Federal Agencies, among others, regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 ("AG Memo"). The AG Memo requested that each agency join the Department of Justice ("DOJ") in recommitting to the implementation of Executive Order 13166 by: 1) establishing a Language Access Working Group ("LAWG") to be responsible for implementing the Executive Order; 2) evaluating and/or updating its limited English proficiency (LEP) Plan; 3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans, and protocols; 4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; 5) notifying the public of its LEP policies, plans, and procedures; 6) assessing non-English language proficiency when considering hiring criteria; and 7) collaborating with other agencies for written translations intended for mass distribution.

The Review Commission has made significant progress in the development and implementation of a language access program. The existing policy was revised in 2011 to more efficiently implement key actions required by Executive Order 13166 and Title VI of the Civil Rights Act of 1964. In May 2014, responsibility for the language access program was transferred to the Office of the Chief Administrative Law Judge. A draft updated plan was developed and circulated to all administrative law judges and key Commission staff members for review and feedback. The Commission implemented the revised and updated plan in August, 2014. A copy of the current plan has been forwarded to the Department of Justice for review and approval by its plan review team.

The Review Commission's goal is to ameliorate LEP as a barrier to accessing its programs and activities; consequently, the Agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with its fundamental mission and existing law. To accomplish this very important goal, the FY 2016 budget provides \$20,000 to cover services for translation of documents and interpreters for individuals with limited English proficiency.

FY 2016

Appropriations Language

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

*For expenses necessary for the Occupational Safety and Health Review Commission,
\$13,212,000.*

**III. PERFORMANCE
BUDGET
JUSTIFICATION BY
ORGANIZATIONAL
UNIT**

Performance Justification by Organizational Unit

The Review Commission has three main offices which function in concert to achieve the agency's overarching mission:

1. The Administrative Law Judge function;
2. The Commission function;
3. The Office of the Executive Director function.

Each office has staff and resources assigned exclusively to it, but all three work collaboratively to meet or exceed the Review Commission's strategic goals. This separation of staff between the ALJs and Commissioners stems principally from the nature of their functions so that each of these review levels is both in fact and appearance, independent of the other. The Office of the Executive Director function supports both the Administrative Law Judge and Commission functions as well as the Agency's strategic planning efforts.

Funding and staffing by function is as follows:

FUNDING (IN MILLIONS) AND FTE BY FUNCTION				
	FY2015 Enacted		FY2016 Request	
	\$	<u>FTE</u>	\$	<u>FTE</u>
Administrative Law Judge	4.9	24	5.7	28
Commission	5.1	25	5.7	29
Executive Director	1.6	8	1.8	9
Total	11.6	57	13.2	66

Administrative Law Judge Function

The front line of our agency's delivery of services to the American public rests with the ALJs. Our judges travel around the country to conduct formal hearings and related proceedings in a fair, just and expeditious manner. This function is directly related to the public service goal of fair, just and expeditious adjudication of disputes brought before the Commission and its ALJs.

The Administrative Law Judges report through the Chief Judge to the Chairman. However, they act independently in arriving at case decisions. The Commission's procedural rules are similar to the Federal rules. In the absence of a specific Review Commission rule, the Federal Rules of Civil Procedure are followed. The Commission's rules are constructed and administered to secure the just and timely determination of every contested case.

Proceedings before the Review Commission's Administrative Law Judges

The events leading to the presentation of an OSHA case before a Review Commission Administrative Law Judge follow an established procedure, and are designed to provide all parties with a fair hearing and swift adjudication of their case. To contest all or part of a citation, penalty, or abatement period, an employer must file a notice of contest with the Secretary of Labor within 15 working days from the receipt of the citation proposed by OSHA. The Secretary of Labor transmits the notice of contest and all relevant documents to the Review Commission's Office of the Executive Secretary for filing and docketing. After the case is docketed, it is forwarded to the Office of the Chief Administrative Law Judge for assignment to an Administrative Law Judge. The case is generally assigned to an Administrative Law Judge in the Review Commission office closest to where the alleged violation occurred. Thereafter, the Administrative Law Judge has full responsibility for all pre-hearing and pre-trial procedures, and is charged with providing a fair and impartial hearing in an expeditious manner, and rendering a decision promptly.

Administrative Law Judge Operations

The Review Commission strives to expedite the judicial process in a fair and impartial manner, and to strengthen its settlement procedures and case management responsibilities by constant monitoring of its Simplified Proceedings and Mandatory Settlement programs. The Administrative Law Judge function handles a caseload that continues to grow in complexity as reflected by the increasing number and complexity of OSHA citations over the last several years.

OSHA conducted 36,163 inspections in FY 2014, and estimates that it will complete 37,485 in FY 2015, and 37,785 inspections in FY 2016. Of particular importance over the last several years from the Review Commission's resource perspective has been an overall increase in the number of citations being contested, and the resulting number of contests being docketed. In FY 2008, the Review Commission docketed 1,962 contests. In FY 2009, the Review Commission docketed 2,058 contests and, then, 2,565 new contests were received in FY 2010. This represents an increase of approximately 25 percent in one fiscal year. In 2011 we received 3,175 new cases which is an increase of 50 percent over two years. Moreover, OSHA implemented a new administrative penalty policy as of the beginning of FY 2011. As a result of this new policy, the average penalty for a serious violation increased, and the contest rate increased from seven percent in FY 2009 to eleven percent in FY 2011 and FY 2012, contributing to the

increase in our caseload. While recent data suggests that our caseload increase may be stabilizing, both our case intake and inventory continue to be above FY 2008 levels and we continue to have an inventory of challenging complex cases. Furthermore, the number of new cases received in FY 2014 was likely depressed as a result of the government shutdown at the beginning of the fiscal year.

Moreover, in addition to the higher level of contests that resulted from OSHA's new administrative penalty policy, OSHA's emphasis in more recent years has been on serious workplace hazards, and the consequent increase in proposed penalties has translated into more complicated cases and more costly trials (cases involving workplace violence, heat stress, lock-out/tag-out, confined spaces, health care hazards, asbestos, process safety, and construction industry hazards, etc.). Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by Administrative Law Judges that are characterized by one or more of the following elements:

- Complex questions arising from intricacies of the law
- Volume of documents, including transcripts
- Large number of witnesses (including expert witnesses in such fields as engineering, architecture, construction, soil, physics, epidemiology, pathology, neurology and infectious diseases)
- Number of alleged violations, items, and affirmative defenses (including distinct and separate items)
- Technical, novel, difficult or new issues raised
- Various types of cases, such as those involving workplace violence, heat stress, asbestos, ergonomics, and process safety management and/or confined spaces

The increased complexity of the caseload is a trend attributed to two factors: (1) OSHA's focus on encouraging more resource and time-intensive inspections; and (2) the Department of Labor, Office of the Solicitor's decision to leverage litigation resources and focus away from high volume and in favor of high-impact strategic cases. The increase in complexity of cases is a challenge for the Review Commission because processing such cases requires Administrative Law Judges to invest a greater amount of time in handling the matters, and places an increased demand on the limited FTE assigned to handle the volume of cases.

The Review Commission is working to increase the efficiency of case processing by moving an appropriate portion of its ALJ docket into its Mandatory Settlement Part and Simplified Proceedings programs, both of which are innovative methodologies to speed the settlement or adjudication of pending cases. During FY 2011, the Review Commission began an evaluation of its current Mandatory Settlement Part program to ascertain whether even greater improvement in this settlement process can be achieved. This evaluation, "Dispute Resolution in the Administrative Process: Evaluation of the Occupational Safety and Health Review Commission

Settlement Part Program,” was completed in FY 2013 by alternative dispute resolution experts at the Indiana University School of Public & Environmental Affairs. The evaluation declared the Agency’s dispute resolution program to be “successful” and noted that OSHRC “has done an admirable job addressing an increased caseload within constrained resources while at the same time meeting the expectations of its external stakeholders.” With the higher caseload levels of recent years, Mandatory Settlement Part has been an important tool in avoiding a backlog of cases at the ALJ level. The Commission has been reviewing specific suggestions for improvement contained in the evaluation. In particular, the evaluation recommended that the Commission provide “training and regular continuing legal education in mediation and dispute resolution to every ALJ who is expected to serve as a settlement judge.” The Review Commission agreed with this recommendation and as a result developed an ALJ training performance goal in our Strategic Plan, FY 2014 - FY 2018.

Under Commission Rule 120, 29 C.F.R. § 2200.120, and where the parties consent, the Chief Administrative Law Judge may assign a Settlement Judge to a pending proceeding to aid the parties in disposing of the case. Where the aggregate amount of the penalty sought by the Secretary of Labor is \$100,000 or greater, the Mandatory Settlement procedure goes into effect. The Settlement Judge appointed by the Chief Administrative Law Judge has full control of the proceeding and may require that the parties’ representatives be accompanied at the settlement conference by officials having full settlement authority. This procedure has aided the Commission in disposing of some extremely complex cases, with the approval of all parties. (If settlement efforts are not successful, the case may be assigned to a different judge for trial.)

The Simplified Proceedings process includes cases where the total proposed penalty is not more than \$20,000, and up to \$30,000, when found eligible by the Chief Judge. The Simplified Proceedings process allows parties with relatively simple cases to have their “day in court” unencumbered by formal procedural and evidentiary rules, while ensuring that due process requirements will be maintained. Under this process, a business, with or without counsel, can present its case before a Review Commission ALJ and receive a prompt decision. Most paperwork, including legal filings, has been eliminated so that justice can be rendered swiftly and inexpensively. The process reduces the time and legal expenses to employers contesting relatively small penalty cases.

In FY 2014, approximately 35 percent of new cases were assigned to Simplified Proceedings. The Review Commission projects that we will assign approximately 46 percent of new cases to the Simplified Proceedings process in FY 2015 and 46 percent in FY 2016.

Simplified Proceedings Case Activity

FY 2011 through FY 2016

	<u>FY 2011</u> <u>Actual</u>	<u>FY 2012</u> <u>Actual</u>	<u>FY 2013</u> <u>Actual</u>	<u>FY 2014</u> <u>Actual</u>	<u>FY 2015</u> <u>Estimate</u>	<u>FY 2016</u> <u>Estimate</u>
New Cases	3,175	2,696	2,215	2,017	2,400	2,500
Cases assigned to Simplified Proceedings	1,783	1,571	919	708	1,100	1,150

Anticipated Administrative Law Judge Workload for FY 2016

Four major factors impact the ALJs' workload: (1) the quantity, magnitude, and nature of the cases; (2) the success of the Simplified Proceedings process; (3) the time, effort and complexity of cases assigned to the Mandatory Settlement process; and (4) the number of trials held, and their length and complexity.

The number of OSHA inspections and their focus also affects the Review Commission's caseload. In particular, inspections of high hazard workplaces - especially those with high injury and illness rates, fatalities, repeat offenders, and egregious violations - generally result in larger contestable proposed penalties. These inspections tend to result in more complex and contentious cases, which consume extensive time. The discovery process is lengthy and time consuming, motion practice is expanded, legal research and decision-writing time is protracted and, of necessity, the trial process is elongated and complicated.

The following table provides actual Administrative Law Judge workloads for fiscal years 2011 through 2014, and estimated workloads for fiscal years 2015 and 2016.

	FY 2011 <u>Actual</u>	FY 2012 <u>Actual</u>	FY 2013 <u>Actual</u>	FY2014 <u>Actual</u>	FY 2015 <u>Estimate</u>	FY 2016 <u>Estimate</u>
OSHA Inspections*:	40,648	40,961	39,228	36,163	37,485	37,785
Administrative Law Judge Workload:						
A. Case Inventory, Start of Year	983	1,345	1,154	909	888	833
B. New Cases	3,175	2,696	2,215	2,017	2,400	2,500
C. Total Caseload	4,158	4,041	3,369	2,926	3,288	3,333
D. Disposals**						
(1) With Hearing	111	95	68	50	75	75
(2) Mandatory Settlement Conferences			81	66	80	85
(3) Without Hearing	2,702	2,792	2,311	1,922	2,300	2,400
E. Total Dispositions	2,813	2,887	2,460	2,038	2,455	2,560
Total Case Inventory, End of Year	1,345	1,154	909	888	833	773

*Provided by OSHA

**In prior budget presentations, the category "With Hearing" included both adjudicatory hearings and mandatory settlement conference hearings. To improve transparency and accuracy, adjudicatory hearings and mandatory settlement conference hearings are now reported separately starting with FY 2013.

Staffing

The Office of the Chief Administrative Law Judge requires 28 FTE positions in FY 2016 to support the workload based on OSHA's planned inspections and contest rates in the coming years, and to meet performance targets, given the number and complexity of the cases anticipated.

The Chief Administrative Law Judge manages the effort to meet the Agency's GPRA goals at the Administrative Law Judge level.

The Chief Administrative Law Judge:

- Reviews and screens all docketed cases, determines the level of complexity and assigns each to an Administrative Law Judge;
- Exercises strong management and monitors the progress of cases in order to ensure that performance goals are met;
- Supervises judicial and administrative staff, and ensures that they receive appropriate training to perform their responsibilities; and
- Examines judicial case management practices of other entities to ensure that OSHRC's procedures are as efficient as possible.

	<u>FUNDING (IN MILLIONS) AND FTE</u>			
	<u>FY 2015 Enacted</u>		<u>FY 2016 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge Function	4.9	24	5.7	28

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for 2014 – 2018 includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"> • Ensure that a significant proportion of both complex and non-complex cases at the Administrative Law Judge level are resolved within one year to 20 months from docketing. • Improve training opportunities for Administrative Law Judges.

The Office of the Chief Administrative Law Judge will advance this strategic goal through the following strategies:

- Expedite the assignment of cases to judges.
- Use objective criteria to designate complex cases and track the processing of these cases.
- Closely monitor case performance, and improve case management information systems and reports.
- Conduct early review and screening of potentially complex cases to expedite the disposition of such cases.
- Implement appropriate changes in the agency’s Rules of Procedure to improve case processing (e.g., Mandatory Settlement Part and Simplified Proceedings), and seek new alternative dispute resolution (ADR) methods, including a review of recommendations resulting from the evaluation of the Mandatory Settlement Part.
- Provide training to all judges on a variety of subjects, including technical and legal issues, legal writing, case management, and ADR to help them develop services and processes equal to the very best in judicial arenas.
- Continue to use a team of judges to handle, on a rotational basis, extremely complex cases and assign appropriate staff to timely process and monitor such cases, including settlement discussions.

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Respect for the rule of law; 2) Expanding transparency and openness; and 3) Responsible stewardship of Agency resources. It also identifies innovative and

comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the Office of the Chief Administrative Law Judge for fiscal years 2012 through 2016:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Ensure that a significant proportion of non-complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	96% Target not met (98%)	95.3% Target not met (98%)	97% Target met (95%)	New Goal developed for FY 2015	New Goal developed for FY 2016
Ensure that a significant proportion of complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	87% Target not met (95%)	85.6% Target not met (95%)	80% Target not met (89%)	New Goal developed for FY 2015	New Goal developed for FY 2016
Ensure that a significant proportion of both complex and non-complex cases at the ALJ level are resolved within one year to 20 months from docketing. *	-Percent of simplified cases -disposed of within one year at ALJ level. -Percent of conventional cases disposed of within 17 months. -Percent of settlement part cases disposed of within 19 months. -Percent of complex cases disposed of within 20 months at ALJ level.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	-Dispose of 95% of simplified cases within one year. -Dispose of 90% of conventional cases within 17 months. -Dispose of 98% of settlement part cases within 19 months. -Dispose of 95% of complex cases within 20 months. (FY 2015 will be the baseline year for this measure)	-Dispose of 95% of simplified cases within one year. -Dispose of 90% of conventional cases within 17 months. -Dispose of 98% of settlement part cases within 19 months. -Dispose of 95% of complex cases within 20 months. (FY 2015 will be the baseline year for this measure)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Improve training opportunities for Administrative Law Judges.	Time and resources dedicated to judicial training with special emphasis on mediation and dispute resolution.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Pro rata share of the Agency’s training resources was devoted. Target met (Pro rata share of the Agency’s training resources)	An appropriate allocation of time and resources reflective of the number of ALJs	Continue to designate a pro rata share of the Agency’s training resources
Publish significant procedural decisions and non-dispositive orders separately from other decisions.	Key decisions and orders published within 4 months of the order.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	11 key decisions and orders published Target not met (15 key decisions and orders published)	20 key decisions and orders published	20 key decisions and orders published

*Except for mandatory settlement cases, which are assigned by the Chief Judge upon receipt from the Executive Secretary’s Office, judges are not assigned cases until initial pleadings have been filed. This assignment generally occurs approximately 60 days after the case has been docketed due to the parties’ frequent requests for extensions of time for filing initial pleadings.

The Review Commission is currently evaluating the factors that impact the timeframe by which complex cases are resolved by the Office of the Chief Administrative Law Judge to determine if the current outcome goal is a fair standard by which resolution should be measured. In FY 2014, several factors adversely impacted CALJ’s ability to meet the targeted outcome goal. First, the office was significantly understaffed. While vacancies in the number of administrative law judges were resolved for the first time in several years, the absence of adequate legal support persisted in FY 2014 and into FY 2015. Existing legal staff, which included four attorneys and nine legal assistants, proved inadequate to meet the administrative and legal writing needs of the full complement of ALJs. The shortage of administrative and legal support resulted in significant delays in issuing decisions and resolving cases. Absent additional support (e.g., legal research and writing), the downturn in performance at the ALJ level with respect to the

disposition of complex cases may continue. The funding requested for FY 2016 assumes three additional positions to provide legal support to OCALJ.

Next, the significant increase in our caseload and the complexity of the cases increased the time required to resolve cases at the ALJ level. Factors leading to the increased complexity of cases include OSHA's focus on encouraging more resource and time-intensive inspections, as well as the Department of Labor, Office of the Solicitor's decision to leverage litigation resources and focus away from high volume and in favor of high-impact strategic cases. The increase in complexity of cases is a challenge for the Review Commission because processing such cases requires Administrative Law Judges to invest a greater amount of time in handling the matters, and places an increased demand on the limited FTE assigned to handle the volume of cases.

Finally, the government shutdown impacted the time for resolving cases at the ALJ level. All staff in the Office of the Chief Administrative Law Judge, including ALJs, were furloughed during the shutdown in FY 2014. The furlough period is significant with respect to the outcome goal of resolving complex cases in less than one year because ALJs were unable to work on resolving cases. Therefore, the time lost during the duration of the shutdown, in addition to the time required to resume operations immediately following the furlough, impacted the Review Commission's ability to meet the target goal.

Commission Function

OSHC's Commissioners are appointed by the President and confirmed by the Senate, and serve as an appellate level of review. The Commissioners review and decide cases contested under the Act, following an initial decision by an Administrative Law Judge. This appellate level of review must be prompt, fair, and protective of the parties' rights.

Proceedings before the Commission

The Commissioners adjudicate contested cases independently from the enforcement and rule-making functions vested in OSHA. Disputed enforcement proceedings are tried initially before the Review Commission's Administrative Law Judges. The Commission members may then review an ALJ's decision.

The Act provides for Presidential appointment and Senate confirmation of three Commissioners, each with a six-year term. The Commissioners sit as an appellate review body to review any case decided by the Review Commission's Administrative Law Judges. Each Commission member has the discretionary authority to direct for review by the full Commission any case decided by any Judge. Absent such a direction for review, the decisions of the Administrative Law Judges become final by operation of law. Once a case is directed for review, the Commission members have authority to review all aspects of a case, including the Judge's findings of fact, conclusions of law, penalty assessments and abatement orders.

Each Commissioner has a counsel who is responsible for providing assistance and advice on all pending matters, including the proper disposition of cases and motions, and whether cases are appropriate for Commission review. Each counsel also aids the Commissioner in researching and editing draft opinions submitted by the General Counsel after the Commission decides a case.

The Office of the General Counsel (OGC) provides legal advice and assists the Review Commission in complying with the various laws, regulations and executive orders governing its operations. OGC has primary responsibility for preparing and presenting factual and legal analyses to assist Commission members in adjudicating appeals, and also provides legal advice on ethics, Freedom of Information Act (FOIA), Equal Employment Opportunity (EEO), procurement, appropriations, Privacy Act and other areas. The Commission function also includes the work of the Office of the Executive Secretary, which is responsible for the docketing of cases at both the ALJ and Commission levels. The Executive Secretary also serves as the Records Management Officer for the Agency in coordination with the National Archives and Records Administration.

Commission Operations

The Commissioners strive to minimize the time for deciding cases. Aided by improved case management technology, the Commission seeks to strengthen the internal processes by which a case is prepared for decision. Three external factors that have a major impact on the operations of the Commission are: the presence of a quorum, the size and complexity of cases, and the

novelty of the issues presented for review.

The Commission consists of three Members appointed by the President. The Act requires a quorum of two Commissioners to take official action, so decisions require the affirmative vote of two Commissioners. During periods when the Commission lacks a quorum, no cases can be decided. If there are only two Commissioners, it may be more difficult to reach agreement sufficient to dispose of some cases. In cases where such agreement cannot be reached, deadlocks result, and action on important issues and issuance of some pending cases may be delayed.

The Commission operated with only two Commissioners during 6 months of FY 2014. This was the result of one Commissioner's term expiring in FY 2011. The third Commissioner was appointed in April of 2014. Notwithstanding the lack of a full complement of Commissioners for half of the fiscal year, and the government shutdown which impacted the Agency's ability to resolve cases, the Commission resolved 12 cases by the end of fiscal year 2014 and met all of its GPRA goal targets for FY 2014 at the Commission level.

Historically, the number of safety and health inspections carried out by OSHA each year, the nature of those inspections, and the rate at which employers choose to contest the citations issued and penalties proposed by OSHA all have an impact on the number of cases before the Review Commission. In addition, OSHA's emphasis during recent years on more serious workplace hazards and the consequent increase in proposed penalties has translated into more complicated cases, and longer, more costly trials. Consequently, the complexity and size of the cases both at the Administrative Law Judge and at the Commission levels has increased significantly in recent years.

Anticipated Commission Workload for FY 2016

The Review Commission focuses on solid case production, including deciding and issuing decisions in older cases in an effort to reduce case inventory. However, the cases that are going to hearings before the Commission's ALJs are becoming more complex (e.g., imposition of higher penalties and/or more complex technical issues), which may result in a higher percentage of cases being petitioned for review.

In FY 2014, the Commission had 36 cases pending on its docket at the beginning of the year. It received 11 new cases and resolved 12 cases by year-end. Thus, the Commission entered FY 2015 with 35 cases pending review. For FY 2015, the Commission anticipates receiving 28 new cases and disposing of 27 cases, ending that year with an inventory of 36 cases.

Commission Case Activity

	<u>FY 2011</u> <u>Actual</u>	<u>FY 2012</u> <u>Actual</u>	<u>FY 2013</u> <u>Actual</u>	<u>FY 2014</u> <u>Actual</u>	<u>FY 2015</u> <u>Estimate</u>	<u>FY 2016</u> <u>Estimate</u>
New Cases:						
Cases Directed for Review:	24	14	24	11	24	24
Other New Cases:						
Interlocutory Appeals	6	2	0	0	2	2
Remands	0	3	1	0	2	2
Other	0	0	0	0	0	0
Total Other New Cases:	6	5	1	0	4	4
Total New Cases:	30	19	25	11	28	28
Case Inventory from Prior Year:	31	35	31	36	35	36
Total Caseload:	61	54	56	47	63	64
Dispositions:	26	23	20	12	27	27
Case Inventory, End of Year:	35	31	36	35	36	37

Staffing

The Commission function requires 29 FTE in FY 2016. This includes 10 FTEs for the three Commissioners and their immediate staff, 14 FTEs for the Office of the General Counsel and 5 FTEs for the Office of the Executive Secretary.

<u>FUNDING (IN MILLIONS) AND FTE</u>				
Commission Function	<u>FY 2015 Enacted</u>		<u>FY 2016 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
	5.1	25	5.7	29

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for 2014 - 2018 includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goal</u>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"> • Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.* • Further reduce the average age of the oldest pending Commission level cases. ** • Resolve all priority cases in a timely manner. ***

*These goals will not apply to cases that are stayed at the Review Commission because criminal law investigations or prosecutions are being pursued.

**The Commission intends to further reduce the average age of the oldest fifteen (15%) percent of pending cases. External factors, such as lack of a quorum or recusal of a Commissioner, may adversely affect the Commission’s ability to meet these goals.

***Priority cases include Federal Rule of Civil Procedure (“FRCP”) 60(b) cases, Commission Rule (“CR”) 101(a) defaults, court remands, and interlocutory reviews. However, some FRCP 60(b) and CR 101(a) cases—those with significant threshold issues—are not treated as priority cases because of the complexity of those issues. Also, where the parties have indicated intent to settle a priority case, the time frame will be tolled.

The Commission will advance its strategic goal through the following strategies:

- Focus on reducing the average age of the oldest pending cases and of all pending cases, with immediate aim of implementing the new case management practices adopted at the end of FY 2014:
- Periodic docket review
 - Conduct quarterly and semiannual case management docket reviews to identify opportunities to speed case processing
 - Quarterly Counsels’ meeting
 - Semiannual Commission docket review

- Strategic Plan implementation monitoring
 - Incorporate data in quarterly docket reports on the age of each pending case, the average age of all pending cases, and the average age of the oldest 15% of cases
 - Review case management aspects of cases that exceed the target average in the periodic docket review meetings
- Efficient briefing practices
 - To the degree practicable, strive to narrowly tailor the issues in the Briefing Notice
- Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, and Rule 60(b) cases), such that they are disposed of within six months of designation.
- Expand knowledge management and research tools to accelerate the preparation of cases and issuance of Commission decisions.
- Assess whether to establish an ADR program at the Review Commission level. The Review Commission published a request for comment in the Federal Register on August 22, 2013, to seek public comment on the potential development of an alternative dispute resolution (“ADR”) program at the Commission’s review level. An ADR program, known as the Settlement Part program, currently exists at the trial level, where a case is heard before an Administrative Law Judge. Following positive feedback from an Indiana University study on the Settlement Part program and interest expressed in an ADR program at the review level during a public meeting held on August 30, 2012, the Review Commission sought input from the public in a Federal Register notice on whether it should develop an ADR program at the review level, and if so, how the program should operate. In response, the Commission received only two comments. The Commission is currently considering how best to proceed.
- Identify and provide training opportunities to all agency attorneys and support staff that will enhance their capabilities, such as training on technical and legal issues, legal writing, ethics, and technology and case management.
- Use individual performance plans that support priorities in the Review Commission’s strategic and annual performance plans.
- Assign teams of attorneys and other staff to large, complex cases to speed their preparation and issuance.
- Implement appropriate changes to the Agency’s procedures to improve case processing at the Commission level.

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the

Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Respect for the rule of law; 2) Expanding transparency and openness; and 3) Responsible stewardship of Agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the Commission for fiscal years 2012 through 2016:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Reduce the average age of open cases at the Commission-level. *	Average age of open cases.	18 months Target met (33 months or less)	21 months Target met (30 months or less)	26 months Target met (27 months or less)	Replacement Goal developed for FY 2015	Replacement Goal developed for FY 2016
Resolve all priority cases in a timely manner.	Percent of priority cases disposed of within 6 months.	100% Target met (100%)	100% Target met (100%)	100% Target met (100%)	(100%)	(100%)
Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.	Average age of all pending Commission-level cases.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Case management practices developed. The average age of all pending Commission-level cases is 26 months. *Target met Develop case management practices. (27 months or less)	Implement case management practices. (24 months or less)	Continue to implement case management practices (23 months or less)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Further reduce the average age of the oldest pending Commission level cases.	Using experience gained from the recent disposition of the legacy cases, as well as recommendations derived from Commission's public meeting on legacy cases, to develop and implement case management practices that minimize the average age of the oldest fifteen (15%) percent of pending cases	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Case management practices developed. *Target met (Develop case management practices)	Implement case management practices.	Reduce average age of the oldest 15 percent of pending Commission level cases by 10 percent from FY 2013 level.

*As of September 30, 2009, the average (mean) period of time for a case on the Review Commission's docket was 46 months. The Review Commission's Strategic Plan for FY 2014 - 2018 anticipated reducing this average to 24 months by the end of FY 2015.

Office of the Executive Director Function

The Office of the Executive Director provides administrative support services for the entire Review Commission to assure success in fulfilling its mission.

Administrative Operations

The Executive Director function provides operational management for the agency, including procurement, information technology management, human resources management, budget and financial management, and administrative services. The day-to-day tasks of this office are led by the Executive Director and include:

- Supporting the development and implementation of the Agency's strategic goals;
- Maintaining and enhancing a website to provide the public with greater access to Review Commission information;
- Providing agency-wide support in the areas of finance, budget, procurement and contracting, human resources, equal opportunity and general administrative services;
- Providing personnel, payroll, benefits, reproduction, and mail services, and travel assistance to agency employees;
- Procuring goods and services, maintenance and needed repairs of equipment, training, reference materials, supplies and office space;
- Implementing case management and administrative systems through IT hardware and software;
- Developing and maintaining computer systems and information security enhancements; and
- Enhancing telecommunications and improving technology efficiency and effectiveness.

Anticipated Office of the Executive Director Workload for FY 2016

During FY 2016, Office of the Executive Director staff will:

- Implement the Administration's government-wide performance initiatives;
- Improve financial and administrative services and enhance integrity and efficiency of the Agency's financial management and human resources programs;
- Provide greater online access to information generated by OSHRC to citizens and other interested parties as a part of the Review Commission's transparency initiatives;

- Provide faster and better public access to and dissemination of Review Commission information and decisions through the use of modern automated technology and techniques, including the Agency's website;
- Improve computer information security based on an evaluation of the Review Commission's computer security, compliance with the various security acts and the implementation of corrections or improvements in any weaknesses found as a result of evaluations;
- Execute the Continuity Of Operations Plan (COOP) including maintenance, testing, and (if needed) implementation of the COOP for Washington, DC and the regional offices in Denver and Atlanta;
- Make use of best knowledge management practices to ensure that employees are better prepared to perform their work, and to provide for continuity and succession planning; and
- Review information technology programs to determine ways to achieve cost savings.

In FY 2015 and 2016, we plan to further improve the quality of our web-based transparency initiatives, including enhancing the OSHRC website to make more information available to internal and external customers, revising our Continuity of Operations (COOP) plan, and undertaking other activities in support of the Review Commission's mission. In FY 2013, we began exploring necessary enhancements to our existing information technology (IT) infrastructure that would support cloud-based initiatives including an electronic platform that would accommodate the filing and service of documents. The e-filing work circle, which is led by senior agency officials including the Chief Administrative Law Judge, Executive Director and Chief Information Officer, concluded that the implementation of an automated system to file and access case information including litigation documents should be explored. Based on this recommendation, the Agency awarded a competitive contract in September 2013 for the preliminary stages of development, deployment and implementation of an e-filing system. This budget request includes the funding necessary to support the e-filing system. The selected vendor has been working with Review Commission personnel to provide a solution that would accommodate our unique requirements utilizing its commercial off-the-shelf Fed RAMP certified solution. We are also in the process of upgrading our infrastructure using vendors from the General Services Administration information technology schedule. This budget includes a request for additional funds to remediate any issues that are likely to arise after initial deployment of the e-filing system. The successful implementation and management of this e-filing system will be demonstrative proof of the Agency's commitment to using technology to improve accuracy and efficiency in its case management practices.

Staffing

The Office of the Executive Director requires 9 FTE in FY 2016. The Office has responsibility for implementing the Administration's performance improvement efforts, including implementing and monitoring strategic and performance plans and reports, budget and performance integration, human capital development and E-government.

<u>FUNDING (IN MILLIONS) AND FTE</u>				
	<u>FY 2015 Enacted</u>		<u>FY 2016 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Executive Director Function	1.6	8	1.8	9

Strategic Plan and Outcome Goals

The Office of the Executive Director's responsibilities include implementation of and/or providing Strategic Plan guidance for the following goals and outcomes:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<p><i>Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements.</i></p>	<ul style="list-style-type: none"> • Ensure that the Review Commission's website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities. • Produce timely and accurate reports on the Review Commission's activities, including all reports required by law. • Enhance the agency's FOIA processing system by developing internet-based capabilities. • Broaden the Review Commission's outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with limited English proficiency (LEP).
<p><i>Responsible stewardship of Agency resources to enhance operations and efficiencies in information technology, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.</i></p>	<ul style="list-style-type: none"> • Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals. • Implement a comprehensive human capital plan designed to recruit, retain and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness. • Integrate knowledge management processes into a plan to capture, share and generate knowledge and establish a unified knowledge network of people, processes and technology to enhance operations and efficiencies in all aspects of essential Agency operations. • Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, and services) to support the effective use of broadband, cyber security, and energy efficiency.

	<ul style="list-style-type: none"> • Use existing and real property more effectively by implementing energy efficiency practices, space alignment efforts (e.g., sustainability) and expanding telework.
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In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Respect for the rule of law; 2) Expanding transparency and openness; and 3) Responsible stewardship of Agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. OSHRC’s Strategic Plan includes the following goals for the Office of the Executive Director for fiscal years 2012 through 2016:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Ensure that the Review Commission’s website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities	Timeliness of postings to agency web site	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	All required material posted to the website in less than 7 days and usually within one day after issuance. Target met (All material posted no later than 7 days after issuance)	All material posted no later than 7 days after issuance	All material posted no later than 7 days after issuance

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Produce timely and accurate reports on the Review Commission's activities, including all reports required by law	Timeliness of submissions of required reports, e.g., financial statements, OMB, OPM, and EEO reports, etc.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	All material submitted by required deadlines. Target met (100% of all material to be submitted by required deadlines)	100% of all material to be submitted by required deadlines	100% of all material to be submitted by required deadlines
Broaden the Review Commission's outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with limited English proficiency (LEP)	Participation in professional conferences and meetings and strategic engagement with stakeholders	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Agency focus was to revise the draft language access plan and submit to DOJ for approval. Target not met (Agency to sponsor one outreach and educational activity per year)	Fully implement a language access plan and post to the Agency's website for public access	Review documents to be translated and posted on the Agency's website

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals	System that links resources to specific activities that support measurable programmatic outcomes and objectives	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Resources were identified for various programs to support the methodology to efficiently align the budget with program goals. Target met (Identify resources to support the methodology to efficiently align the budget with program goals)	Align budget with Agency program goals to efficiently accomplish mission (e.g., program, human capitol, procurement, IT infrastructure, and space and facilities)	Align budget with Agency program goals to efficiently accomplish mission (e.g., program, human capitol, procurement, IT infrastructure, and space and facilities)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Implement a comprehensive human capital plan designed to recruit, retain and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness	Increase personnel capabilities and development by improving training opportunities	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	.55 of basic payroll was devoted to staff training and development. *Target met (.55 percent of basic payroll devoted to staff training and development)	.65 percent of basic payroll devoted to staff training and development	.70 percent of basic payroll devoted to staff training and development

*The Review Commission devoted .55 percent of basic payroll to staff training and development. However, our ability to expense all funding for this purpose was severely impacted due to a nearly four month Continuing Resolution.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
Integrate knowledge management (KM) processes into a plan to capture, share and generate knowledge and establish a unified knowledge network of people, processes and technology to enhance operations and efficiencies in all aspects of essential Agency operations	<p>Conduct periodic knowledge audits to identify sources of knowledge and “at risk” knowledge gaps**</p> <p>Tailor IT infrastructure to support the effortless sharing and transfer of knowledge</p> <p>Degree to which best practices and lessons learned are integrated into the performance management system</p>	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	<p>Staff trained in learning solution designed to optimize organizational performance and identify KM gaps.</p> <p>***Target partially met (Design the knowledge management audit to establish benchmarks to evaluate knowledge gaps in the essential Agency operations and programs)</p>	Use findings from evaluation knowledge management audit to identify and address knowledge gaps	Evaluate the effectiveness of the Phased Retirement HR initiative.

**Areas identified as potential “at risk” knowledge gaps include programs and functions where a subject matter expert is eligible to leave the Agency (through retirement or career transition) in one to three years and no backup expert has been identified to assume the duties and responsibilities vacated.

***The training is an essential tool necessary to effectively execute the KM audit. In addition, the Review Commission began developing a policy to implement OPM’s Phased Retirement human resources initiative. The initiative, designed to assist agencies with KM and continuity of operation as well as prepare the next generation of experts for success, was launched by OPM in August 2014.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
<p>Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, and services) to support the effective use of broadband, cyber security, and energy efficiency</p>	<p>Streamline operations and infrastructure to eliminate duplication; minimize servers, storage and application sprawl</p> <p>Maintain standardized platforms including hardware and software</p> <p>Improve network/communications to ensure customers can access necessary information without delay</p>	<p>New goal developed to support FY 2014 – 2018 Strategic Plan</p>	<p>New goal developed to support FY 2014 – 2018 Strategic Plan</p>	<p>Evaluated expanding the existing IT infrastructure and began procuring equipment and services necessary to support the e-filing initiative.</p> <p>Target met (Evaluate expanding the existing IT infrastructure to support e-filing initiative)</p>	<p>Implement recommended IT infrastructure upgrades identified in evaluation</p>	<p>Continuing Monitoring to see if additional resources are required</p>
<p>Use existing real property more effectively by implementing energy efficiency by implementing energy practices, space alignment efforts (e.g., sustainability) and expanding telework</p>	<p>Implement measures to reduce operating expenses when negotiating lease and develop a system to evaluate areas of consumption that impact sustainability</p>	<p>New goal developed to support FY 2014 – 2018 Strategic Plan</p>	<p>New goal developed to support FY 2014 – 2018 Strategic Plan</p>	<p>Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards.</p> <p>Target met (Establish goal of acquiring a percentage of supplies and equipment from eco-</p>	<p>Increase the percentage of supplies and equipment procured from eco-friendly sources</p>	<p>Continued monitoring to ensure supplies and equipment are procured from eco-friendly sources</p>

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2012 Actual (Target)	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 (Target)	FY 2016 (Target)
				friendly sources) -Disposed of equipment through certified recyclers. Target met (Dispose of equipment in an environmentally friendly manner)		
Enhance the agency's FOIA processing system by developing internet-based capabilities	Development of an electronic form and/or request tracking capability	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	Developed an electronic request form used for processing and expediting FOIA requests. Target met (Assessment of tools and resources necessary for processing and expediting FOIA requests electronically)	Develop tools to be used for processing and expediting FOIA requests electronically	Evaluate and monitor use of online FOIA request form; explore options for online tracking capability

**IV. BUDGET BY OBJECT
CLASSIFICATION
CATEGORY**

Budget by Object Classification (BOC) Category

The U.S. Occupational Safety and Health Review Commission requests an appropriation of \$13,212,000 for FY 2016 to continue our mission of adjudicating OSHA-issued workplace safety citations. The amount supports 66 FTE positions necessary for the efficient adjudication of increasingly complex cases as well as funding for other costs.

The proposed budget for FY 2016 by object classification category is shown in the table below, along with the FY 2015 enacted budget. A narrative explanation of the amount budgeted for each object classification follows the table.

Object Classification Table

Fiscal Years 2015 and 2016
(Dollars in Thousands)

Budget Object Class		FY 2015 Enacted	FY 2016 Request	Change FY 2015 Enacted – FY 2016 Request	
				\$	%
11.0	Personnel Compensation	\$6,788	\$7,790	+1,002	+14.76
12.0	Personnel Benefits	1,898	2,148	+250	+13.17
	Subtotal Personal Services	8,686	9,938	+1,252	+14.41
21.0	Travel	175	185	+10	+5.71
22.0	Transportation of Things	7	10	+3	+43
23.1	Space Rental Payments (GSA)	1,517	1,482	-35	-2.36
23.3	Communications, Utilities and Misc.	109	343	+234	+215
24.0	Printing and Reproduction	17	17	0	0
25.0	Other Services	806	972	+166	+20.6
26.0	Supplies and Materials	42	43	+1	+2.38
31.0	Equipment	280	222	-58	-20.71
	Grand Total	11,639	13,212	+1,573	+13.51

Budget Object Classification Detail

11.0 Personnel Compensation

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
6,788,000	7,790,000	+1,002,000	+14.76

The Review Commission requests \$7,790,000 to fund direct payroll costs in FY 2016. This includes funding for a pay increase that is anticipated in January 2016. This amount assumes the support for 66 FTE positions. This object class also supports awards to recognize those employees whose performance is superior, and who perform special acts or services.

12.0 Personnel Benefits

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
1,898,000	2,148,000	+250,000	+13.17

The Review Commission requests \$2,148,000 to fund the payroll-related costs of employee benefits in FY 2016. These benefits principally consist of the government's contributions to the CSRS and FERS retirement programs, life and health insurance programs, the Transit Subsidy Program, and the Thrift Savings Plan.

21.0 Travel

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
175,000	185,000	+10,000	+5.71

The requested amount for travel in FY 2016 is \$185,000. Travel of Administrative Law Judges (ALJs) to conduct hearings accounts for the majority of this request. It should be noted that approximately 90 percent of the Review Commission's travel budget pays for ALJ travel in order to conduct hearings. These hearings are conducted as close as possible to the site of the alleged violation. OMB Memorandum M-12-12 requires agencies to reduce travel expenses to a level at least 30 percent less than the amount spent on travel in FY 2010 in Fiscal Years 2013 through 2016. However, due to the inherent relationship between OSHRC ALJ hearings and the health and safety inspection process, OSHRC's ALJ travel expenses were excluded from the 30 percent reduction. The remainder of these funds is for travel associated with training, necessary travel to the regional offices and other requirements.

22.0 Transportation of Things

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
7,000	10,000	+3,000	+43

An amount of \$10,000 is requested to fund the cost of shipping materials between Review Commission offices and other locations.

23.1 Rental Payments to GSA

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
1,517,000	1,482,000	-35,000	-2.36

The request includes \$1,482,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2016 estimates provided by the General Services Administration (GSA) to the Review Commission.

23.3 Communications, Utilities and Miscellaneous Charges

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
109,000	343,000	+234,000	+215

The Review Commission requests \$343,000 for communication costs in FY 2016. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. As a result of this, our telecommunication costs have increased to support our cloud initiative with increased security and bandwidth requirements and pave the way for future cloud initiatives.

Local phone service and telecommunication costs are projected to be \$323,000. Postage for the required mailing of letters, case files, and other materials related to cases is expected to be \$20,000.

24.0 Printing and Reproduction

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
17,000	17,000	-0-	-0-

The requested amount for printing in FY 2016 is \$17,000. Printing costs consist mainly of the charges for publishing rules, proposed rules and other announcements in the Code of Federal Regulations (CFR) and/or the Federal Register, and for purchasing copies of the CFR and other

GPO publications. Together, these printing/publishing costs are expected to approximate \$10,000 in fiscal year 2016. The balance of the budget -- \$7,000 -- is needed for printing of Rules of Procedure and Guide to the Review Commission pamphlets, which are provided to parties to Review Commission proceedings.

25.0 Other Services

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
806,000	972,000	+166,000	+20.6

The requested amount for other services in FY 2016 is \$972,000. This amount will allow the Review Commission to maintain our current services. Requirements in this area fall into two basic categories: Interagency Agreements for services provided by other Federal agencies; and contractual services provided by non-Federal vendors. Additional information on each of these is provided in the following paragraphs.

Services Provided by Other Federal Agencies. A total of \$442,000 is requested for services provided by other Federal agencies. Our costs have increased in this category as a result of additional service costs associated with a new time and attendance system provided by the National Finance Center (NFC), along with higher costs for our Interagency Agreements with the Office of Personnel Management (OPM) and the National Archives and Records Administration (NARA). This area includes \$14,000 for personnel and payroll services provided by NFC, \$279,000 for financial and administrative services provided by the Bureau of the Fiscal Service (BFS), \$35,000 for the annual ALJ Assessment Fees and certification services provided by OPM, and \$56,000 for building security (estimated) provided by the Department of Homeland Security. This category also includes funds needed for continuing maintenance of the Review Commission’s Internet website, \$30,000, which is housed at and maintained by the Government Printing Office. The remaining amount will be used to fund other Interagency Agreements such as with the U.S. Department of Health and Human Services (Federal Occupational Health), the General Services Administration, OPM and NARA.

Other Contractual Services. OSHRC procures a variety of budget impactful services which support both the core mission of the agency and additional mandated functions. These include: program optimization, security and post development support for the e-filing initiative/system (\$113,000); court reporting (\$100,000); law library operations (\$80,000); on-line legal research (\$43,000); contractual services for both the Federal Information Security Management Act (FISMA) audit (\$29,000) and financial statements audit (\$29,000); services for translation of documents and interpreters for individuals with limited English proficiency (\$20,000); and additional variable outlays related to the ongoing training of employees.

26.0 Supplies and Materials

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
42,000	43,000	+1,000	+2.38

The requested amount for supplies and materials in FY 2016 is \$43,000. This amount includes general office supplies (\$22,000) and information technology supplies and software (\$21,000).

31.0 Equipment

Change FY 2015 Enacted – FY 2016 Request

FY 2015 Enacted	FY 2016 Request	Amount	Percent Change
280,000	222,000	-58,000	-20.71

The requested amount for equipment in FY 2016 is \$222,000. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. As a result, our information technology infrastructure was upgraded and additional licensing and hosting costs are required to maintain the system. We estimate that the annual costs will be \$100,000. Subscriptions and other publications necessary to maintain our legal libraries are included in this object class. The remainder is required for new and/or replacement computer and other information technology requirements, and to enable us to comply with Government-wide mandates such as the Federal Information Security Management Act. Our information technology equipment includes personal computers, printers, a local area network, and associated peripherals. Finally, a small portion of this funding will be used to purchase any office furniture that may be needed.

V. OTHER TABLES

The U.S. Occupational Safety and Health Review Commission Appropriation History

<u>Fiscal Year</u>	<u>Request to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1995	\$7,655,000	\$7,595,000	\$7,595,000	\$7,595,000
1996	\$8,127,000	\$8,200,000	\$8,100,000	\$8,081,000 ¹
1997	\$7,753,000	\$7,753,000	\$7,753,000	\$7,738,000 ²
1998	\$7,800,000	\$7,900,000	\$7,800,000	\$7,900,000
1999	\$8,050,000	\$8,100,000	\$8,100,000	\$8,092,000 ³
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 ⁴
2001	\$8,720,000	\$8,600,000	\$8,720,000	\$8,720,000
2002	\$8,964,000	\$8,964,000	\$8,964,000	\$8,958,000 ⁵
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 ⁶
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 ⁷
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 ⁸
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 ⁹
2007	\$10,346,000	\$10,510,000	\$10,346,000	\$10,470,779
2008	\$10,696,000	\$10,696,000	\$10,696,000	\$10,696,000 ¹⁰
2009	\$11,186,000	\$11,186,000	\$11,186,000	\$11,186,000
2010	\$11,712,000	\$11,712,000	\$11,712,000	\$11,712,000
2011	\$12,051,000	\$11,712,000	\$12,051,000	\$11,712,000 ¹¹
2012	\$12,773,000	\$11,689,000	\$11,689,000	\$11,689,000 ¹²
2013	\$11,965,000	\$11,667,000	\$11,667,000	\$11,666,908 ¹³
2014	\$12,634,830			\$11,411,000
2015	\$12,651,000			\$11,639,000
2016	\$13,212,000			

¹ Reduced to \$8,081,000 by P.L. 104-134

² Reduced to \$7,738,000 by P.L. 104-208

³ Reduced to \$8,092,000 by H.R. 1664

⁴ Reduced to \$8,470,000 by P.L. 106-113

⁵ Reduced to \$8,958,000 by P.L. 107-206

⁶ Reduced to \$9,610,125 by P.L. 108-7

⁷ Reduced to \$9,863,000 by P.L. 108-199

⁸ Reduced to \$10,510,240 by P.L. 108-447

⁹ Reduced to \$10,404,900 by P.L. 109-149

¹⁰ Reduced to \$10,509,141 by P.L. 110-161

¹¹ Reduced to \$11,688,576 by P.L. 112-10

¹² Reduced to \$11,666,908 by P.L. 112-74

¹³ Reduced to \$11,056,659 by P.L. 113-6 and Sequestration Order issued March 1, 2013

**Authorized Full Time Positions
By Function**

	<u>FY 2014</u> Actual	<u>FY 2015</u> Estimate	<u>FY 2016</u> Estimate
Administrative Law Judge:			
AL-II	1	1	1
AL-III	11	11	11
GS-14	2	2	2
GS-13	1	1	3
GS-12	2	2	2
GS-11	1	0	1
GS-10	1	1	1
GS-9	1	2	2
GS-8	<u>5</u>	<u>4</u>	<u>5</u>
<i>Sub-total</i>	25	24	28
Commission:			
Executive Level III	1	1	1
Executive Level IV	2	2	2
ES-00	2	2	2
GS-15	5	5	6
GS-14	6	5	6
GS-13	2	3	3
GS-12	2	1	1
GS-11	5	3	4
GS-10	0	0	0
GS-9	0	1	1
GS-8	1	1	1
GS-7	<u>2</u>	<u>1</u>	<u>2</u>
<i>Sub-total</i>	28	25	29
Office of the Executive Director:			
ES-00	1	1	1
GS-15	3	3	3
GS-14	0	0	0
GS-13	0	0	0
GS-12	3	3	3
GS-11	0	0	0
GS-7	1	1	1
GS-6	1	0	0
GS-5	<u>0</u>	<u>0</u>	<u>1</u>
<i>Sub-total</i>	9	8	9
Total full-time positions:	62	57	66